

REMARKS

Applicants appreciate the courtesy extended by the Examiner during the telephone conference on May 14, 2004.

The Office action of February 19, 2004 has been received and its contents carefully noted.

Claims 54-85 are pending in the application. As discussed during the telephone conference with the Examiner, Claims 54-57, and 83 have been amended in accordance with 35 U.S.C. § 112.

Applicants respectfully submit that the restriction requirement be withdrawn in view of these amendments. Also, further arguments to withdraw the restriction requirement have been made below.

Applicants respectfully traverse the restriction requirement, and request allowance thereof in the continuation prosecution application for the following reasons.

The Restriction Requirement Should be Withdrawn

The Action states that the present invention includes a plurality of distinct species embodiments as described in FIGS. 13, respectively. However, Applicants strongly contend that independent Claim 54 is a generic claim including the features of a top injector, bottom injector, and tunnel barrier that read on all disclosed embodiments of the present invention in accordance with MPEP § 806.04(d). And relatedly, the remaining

independent Claims 55-57, and 74 are drawn to species that include all the recited features of the generic Claim 54. Therefore, allowance of generic Claim 54 would necessarily indicate allowance of Claims 55-57, 74, and other remaining claims since these species would include all the features of the generic Claim 54 in accordance with § 806.04 (d) and 37 CFR § 1.141. Accordingly, the restriction requirement should be withdrawn.

However, in accordance with 35 U.S.C. § 121, Applicants elect, with traverse, embodiment 1 as defined in the Action where Claims 54, and 58-85 read thereon, if the restriction requirement is maintained.

Conclusion

In view of the amendments and remarks submitted above, it is respectfully submitted that all of the remaining claims are allowable and a Notice of Allowance is earnestly solicited.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayments to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

The Examiner is invited to contact the undersigned at (703) 205-8000 to discuss the application.

Respectfully submitted,

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Attachment: Letter Requesting Initialed PTO 1449 Forms